



STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Jim Gibbons, Governor

Allen Biaggi, Director

Leo M. Drozdoff, P.E., Administrator

Jere Johnson
USEPA REGION 9
75 Hawthorne Street
Mail Code: SFD-7-2
San Francisco, CA 94105
September 11, 2008

Dear Ms. Johnson:

The Nevada Division of Environmental Protection Bureau of Corrective Actions (NDEP-BCA) has reviewed the draft Five-Year Review Report (FYR) for the Carson River Mercury Site (CRMS) dated September 2008. We do agree with the conclusions of the FYR regarding implementation gaps of the remedy at the site. However, the NDEP disagrees with some of the specific methods outlined to address these gaps. We look forward to working with US EPA to address the problems in a manner that is protective of human health and the environment and contributes to Nevada's economy.

There are essentially five areas of concern that were addressed in this FYR that can impact NDEP-BCA and how the CRMS is managed. We believe that these concerns can be addressed with increased funding or services provided by EPA. Current NDEP staffing levels are not adequate to address all problems identified in the FYR.

1. A central issue that effects implementation of the remedy at the CRMS is defining areas of concern (AOC). A site boundary has never been defined, and as a result, all stakeholders find it difficult to determine if a property is or is not subject to requirements outlined in the Record of Decision (ROD). As outlined in the draft Long Term Sampling and Response Plan (LTSRP), the NDEP would like to define AOC to facilitate management of the site – such a definition is *required* to improve overall management of the site. This is particularly crucial to the review of smaller sites (<5 acres commercial or <5 home residential development). To capture smaller sites for review, we must provide Lyon Co. with a boundary of the AOC, so that they would be able to refer the appropriate homeowners to the NDEP.

Further, a better definition of the AOC will allow for better implementation of the institutional controls (ICs). This would likely include a significant soil sampling effort throughout the CRMS. The goal of this effort would be to narrow the boundary that includes more likely contaminated

areas. The level of effort is significant, but could be accomplished with NDEP contractor support funded through the Interagency Agreement (IAG) or services provided directly by EPA.

2. We concur with the recommendation to finalize the LTSRP by September 2009. We had planned on finalizing the LTSRP this fiscal year, but there are some additional components that the FYR addresses and recommends be addressed in the final LTSRP that will create additional work and negotiation.
3. The FYR recommends that Institutional Controls (ICs) be placed for the EPA-lead remediated properties that will be protective of current and future property owners. Currently there are no deed restrictions, and Army Corps, during their site visit and in the FYR, noted that there was some disturbance to one of the four properties that could bring additional contamination to the surface, with no sampling or monitoring. This item would need to be discussed not only internally, and between BCA and EPA, but also between BCA and Lyon County, and with the current property owners. This will be a difficult task and NDEP is concerned about our relationship with Lyon County and the public with regards to this task. Essentially, we would need to inform the landowners 10 years after the removal at their property that there may be more requirements to ensure protectiveness of the remedy. We are unlikely to get property owner cooperation with this request. Annual inspections and updates on land use and integrity of the remedy is our recommendation to successfully monitor the remedy. Once the decisions are negotiated for how to accomplish this goal, then we could hand off the implementation plan to a contractor for development, or have an additional staffer assist NDEP-BCA with this.
4. Additionally included in the LTSRP is a recommendation to review individual properties or developments smaller than 5-acres or 5 residential properties that currently escape the BWPC sewerage plan requirements and do not enter into NDEP-BCA's purview. Again, defined AOCs are required to accomplish this task. Once the AOCs are more narrowly defined, the NDEP-BCA will be able to work with Lyon County to review smaller sites that are currently outside the review process.
5. Finally, the FYR authors discovered impediments to the Durable Notification Mechanism for existing large developments. They note that there is no consistent approach to documenting sampling and that it is difficult for a property owner to discover meaningful information regarding the risk at their property and how to best manage that risk. Note the following excerpt from the FYR:

"The durable notification mechanism (DNM) efforts are not as successful as the sampling and remediation efforts. Environmental covenants (ECs), covenants, conditions and restrictions (CC&Rs), and technical documents are not being recorded at the Lyon County Recorder's Office consistently. The ICs for the properties that have been remediated through the LTSRP are not recorded and/or the pertinent information is not presented in a manner in which a member of the general public would easily be able to locate, understand, and use. More efforts are needed in ensuring DNMs are recorded when necessary as per LTSRP guidelines, and that the DNMs include appropriate information on CRMS contamination that educates and guides subsequent property owners."

The visibility of the IC's discussed above can best be solved in cooperation with Lyon County Records Office.

In addition the authors note that the newly developed and distributed brochure that Lyon County agreed to distribute is serving "only as an informational IC and is not intended as a mechanism to ensure protectiveness." The authors recognize the value of the brochure, but the FYR is recommending that stronger protection measures be implemented when property owners are likely to disturb sub-surface soils. We disagree with this characterization, and we believe that informational ICs in this case are more effective than an enforcement-oriented IC. The NDEP has worked closely with Lyon County to implement this IC and we feel it is appropriate for the site. Enforcement-oriented ICs would likely be rejected by Lyon County and lead to deterioration in our relationship with them.

In conclusion, the NDEP-BCA concurs with the FYR findings, however, we disagree with specific methods of addressing the findings. Regardless of specific methods used to address these findings, they do represent a significant increase in the NDEP workload for managing the CRMS. We look forward to working with EPA to implement measures that address the protectiveness of the remedy at the CRMS in a manner that is in the interest of all stakeholders.

Sincerely,

Jeryl Gardner, CEM
Superfund, Abandoned Mines and Environmental Assistance Programs
Bureau of Corrective Actions, Nevada Division of Environmental Protection